IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11257 of 2001

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAMUBEN NATHUBHAI KATARA - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR RS SANJANWALA for Petitioner No(s).: 1.
MR PR ABICHANDANI, AGP For Respondent No(s).: 1, 2,3.

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CORAM :HON'BLE MR JUSTICE AKIL KURESHI

Date : 08/07/2005

ORAL JUDGMENT

The petitioner has challenged the order dated 26th November 2001 passed by the State Government by which the order dated 28.8.91 allotting the Government land to the petitioner for agricultural purpose admeasuring 8 acres of survey No.39 of Bhiloda, Tal: Shamlaji came to be

canceled. The petitioner has also challenged the order dated 27.11.01 passed by the Collector, Sabarkantha, which is consequential to the order passed by the State Government and in effect cancelled the grant of land in favour of the petitioner. The petitioner has raised number of contentions in support of her challenge to the impugned orders. Besides other grounds, it is urged that after having passed an order granting land in favour of the petitioner, a show cause notice dated 25.7.2000 was issued calling upon the petitioner why an earlier order dated 24.1.92 should not be cancelled. In the said show cause notice, two specific grounds were raised by the authorities. It is suggested that the petitioner holds agricultural land admeasures 18 acres and 10 gunthas at village Ode Tal: Bhiloda and that her husband is serving. Despite these facts, the petitioner by misstating facts obtained order for grant of land. It is the case of the petitioner that after issuance of show cause notice by the Collector, to which the petitioner also replied, the actual order came to be passed by the Government on 26.11.2001. In the order passed by the Government, reliance has been placed on a report from the Collector, Sabarkantha, dated 6.9.2001. It is contended that when the Collector issued a show cause notice and when the petitioner replied to the show cause notice to the

Collector, the issue could not have been decided by the Government that too by relying upon an undisclosed report of the Collector. It is contended that the fact that the petitioner is a co-owner in an agricultural land situated at village Ode and that her husband is in Government service in the police department were very much part of the record and before the Government when earlier the decision was taken to grant land in favour of the petitioner.

2. Without examining the rival contentions on merits, I am of the opinion that the petitioner is justified in complaining about the manner in which the Government took its decision on 26.11.2001. It is not in dispute that the report of the Collector dated 6.9.2001 was never supplied to the petitioner. The said report has been heavily relied upon by the Government in passing the said order. Thus without giving an opportunity to place a rebuttal material on record, the Government relied upon the report of the Collector dated 6.9.2001 and decided the issue against the petitioner. To that extent, the impugned order dated 26.11.2001 is required to be and is hereby set aside. The order dated 27.11.01 passed by the Collector being purely consequential order passed by the Government, the same is also set aside.

3. Without expressing any opinion on the merits or demerits of the rival contentions, the proceedings are remanded back to the government for fresh consideration after supplying a copy of the report dated 6.9.2001 of the Collector, Sabarkantha and permitting the petitioner to make further representation, if she so wishes to do in response to the said report. It will be open for the petitioner to raise all legal contentions including the contention that after a long gap of time, the order passed by the Government could not have been recalled or reopened. The fresh proceedings shall be concluded as expeditiously as possible and preferably within a period of three months from the date of receipt of a copy of this order. With these directions, the petition is disposed. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)